

CONTINUITY OF OPERATIONS (COOP) HUMAN RESOURCES Reference Guide



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Introduction

Introduction to Continuity of Operations

The purpose of this reference guide is to provide technical assistance on human resource (HR) topics to State of Kansas executive branch agencies. Executive branch agencies should use the information contained in this guide during the development of their agency specific Continuity of Operations Plans (COOP) to ensure the continuation of critical internal services should buildings/facilities and support infrastructure (staff, Information Technology, and business systems) become unusable or unavailable. This document is not intended to include all functions and agency responsibilities for external public health and safety concerns that are represented in other State of Kansas Emergency Operation Plans.

In the event a COOP emergency is declared in the State of Kansas, Agency COOP representatives will be the central points of contact for state employees. State agencies will be required to determine which workers are essential, how payroll will be processed, what leave options will be granted, and how various staffing issues will be addressed. The following information should be used by state agencies in the development or updating of their agency specific COOP plan. The topics included in this reference guide are not all inclusive, but represent examples of HR topics that should be considered when planning for a COOP event.

Essential Functions and Staffing

Essential functions are those that enable an organization to provide vital services, exercise civil authority, maintain the safety of the general public and sustain the industrial and economic base. In short they are the agency's mission-essential functions that must continue with minimal or no disruption.

I. Identifying Mission Essential Functions

In planning for COOP activation, it is important that each agency establish priorities before an emergency in order to ensure that the employees who are defined as essential can complete mission-essential functions that are critical to the overall operation of the agency and support emergency response efforts within State of Kansas. Each agency will need to ensure that mission-essential functions can continue or resume as rapidly and efficiently as possible during an emergency. Any task not deemed mission-essential must be deferred until additional personnel and resources become available.

Agencies may refer to staffing models that may already be in place for declarations of inclement weather and holiday staffing as a guide to help identify mission-essential functions that can be performed with minimal staffing.

As a general guide, agencies should identify mission-essential functions (from highest to lowest priority) that must be performed based on the following levels of severity:

- A. functions that must be performed given a one day disruption;
- B. functions that must be performed given a disruption greater than one day, but less than one week; and,
- C. functions that must be performed given a disruption of greater than one week, but less than one month.

Ideally, all functions should be restored to normal levels after 30 days of emergency operations.

II. Establish Staffing and Resource Requirements

To ensure that the mission-essential functions referenced in Section I above are effectively continued with minimal interruptions, it is imperative that each function have qualified staff assigned to them. The employees that are identified to carry out mission-essential functions should have all necessary qualifications. In addition, each agency should determine if employees that are currently performing these mission-essential functions hold special certifications or licenses and if no additional existing employees hold these certifications, agencies should make arrangements to ensure other employees in the agency

obtain the necessary certifications or make arrangements to obtain these services from other entities.

Lines of succession should be defined at all levels of state agencies in order to ensure continuity of mission-essential functions. It is recommended that each agency provide successions to a minimum depth of three at any point where policy and directional functions are carried out. Agencies should make arrangements to cross-train employees to ensure appropriate lines of succession will be in place in the event of an emergency.

Each level of organization within state agencies should pre-delegate authorities for making policy determinations and decisions. All such pre-delegations will specify what the authority covers, what limits may be placed upon exercising it, who (by title) will have the authority, and under what circumstances, if any, the authority may be delegated.

It is likely that during a COOP event certain occupational categories such as health care workers and law enforcement will be in high demand. Agencies should take this into consideration when evaluating staffing requirements.

Agencies with grant, federal or other special funded positions should ask the federal agency or organization providing the grant for guidance in the event of a disaster and emergency, particularly with respect to options for keeping such positions in pay status in the event of an emergency.

III. Staffing Changes Impact on Compensation

Ensuring that agencies' mission-essential functions are covered may require employees to be assigned work of a lower level classification due to a high level of absences. Pursuant to Kansas Administrative Regulation (K.A.R.) 1-4-7, employees may perform the work of lower level classifications with no impact to their current job classification provided the employee is still responsible for their current job as well. If the employee is not performing any of the duties associated with their current classification, the agency appointing authority has the flexibility to reallocate the position to a lower classification.

Employees may also be required to perform the work of a higher level classification. Pursuant to K.A.R. 1-6-29, any agency appointing authority may temporarily assign an employee to perform the duties of another position on the basis of an acting assignment if the incumbent is unable to perform the duties for 30 days or more. Periods of less than 30 days are not considered unreasonable and the employee would remain in their existing job classification.

IV. Hiring Employees

Agencies may need to bring on new employees if they are unable to find existing state employees to staff their mission-essential functions. Agencies have the authority to recruit and hire employees. Classified and unclassified temporary positions may be filled immediately and without competition at the discretion of the agency appointing authority. In accordance with K.A.R. 1-6-2, agencies must post a job requisition on the central notice of vacancy report administered by the Division of Personnel Services for all classified regular positions unless a waiver is approved by the Director of Personnel Services (DPS). During certain COOP emergencies the Director of Personnel Services will notify agencies that DPS will waive the requirement for agencies to post 'Mission-Essential' classified regular job vacancies so that agencies may quickly recruit and fill these positions.

Approval to fill certain unclassified positions in the Executive Branch of government is given by the Office of the Governor. This process will also be addressed during the designation of certain COOP emergencies and agencies will be notified how to proceed during these events.

V. Temporary Employment Contracts

To assist agencies with finding additional qualified employees during COOP events, agencies may utilize the statewide Temporary Employment Services Contract (Number 08807). The State has contracted with temporary employment providers across the State to give agencies the ability to quickly hire and place temporary employees. The contract can be viewed at the following link:
<http://www.da.ks.gov/purch/adds/EVT0000921-ContractorInformation.pdf>

The State will incorporate standardized language into procurement documentation in order to advise vendors doing business with the State of Kansas that they are expected to be prepared in the event of a COOP Emergency.

VI. Labor Relations

Most labor agreements contain some provisions which address emergency situations. Agencies should review these provisions in preparing for and responding to emergency situations. Additionally, K.S.A. 75-4326 provides, in part, that nothing in the Kansas Public Employer-Employee Relations Act (PEERA) is intended to circumscribe or modify the existing right of a public employer to take actions as may be necessary to carry out the mission of the agency in emergencies.

Information regarding Labor Relations may be found on the following website:
<http://www.da.ks.gov/ps/subject/labor/laborrelations.htm>

75-4326. Existing rights of public employer not affected. Nothing in this act is intended to circumscribe or modify the existing right of a public employer to:

- (a) Direct the work of its employees;
- (b) Hire, promote, demote, transfer, assign and retain employees in positions within the public agency;
- (c) Suspend or discharge employees for proper cause;
- (d) Maintain the efficiency of governmental operation;
- (e) Relieve employees from duties because of lack of work or for other legitimate reasons;
- (f) Take actions as may be necessary to carry out the mission of the agency in emergencies; and
- (g) Determine the methods, means and personnel by which operations are to be carried on.

History: L. 1971, ch. 264, § 6; March 1, 1972.

VII. Data Collection

The Office of Personnel Services, Department of Administration (OPS) will utilize data stored in the Statewide Human Resource and Payroll System (SHARP) to monitor the volume of employee absences and to assist agencies who may be looking for available staff in the event of a COOP emergency. OPS staff members will use existing communication methods such as the SHARP infolist and HR and agency head e-mail lists to distribute information.

Telecommuting/Telework

The State of Kansas encourages Executive Branch agencies to develop telecommuting/telework policies to enhance the ability to quickly implement social distancing of your mission-essential employees when a COOP event such as a Pandemic Influenza outbreak occurs.

Telecommuting/teleworking is generally defined as working one or more days at home and communicating with the office by phone, fax and/or computer. Success of such an arrangement depends on a realistic assessment of the alternate work space and the ability of the employee to successfully complete their work in this environment.

OPS Bulletin 08-04 provides a general framework for telecommuting/teleworking policy development in Executive Branch State agencies. It does not attempt to address the unique needs of all individual agencies. This Bulletin can be viewed at the following link and is also included as part of this reference guide and labeled as Attachment A:

<http://da.ks.gov/ps/documents/bulletins/0804.htm>

When developing a telecommuting/teleworking policy, an agency should consult with its legal counsel to determine if the language meets the agency's specific needs. The Department of Administration's Telework Policy can be viewed at the following link and is also included as part of this reference guide and labeled as Attachment B:

<http://da.ks.gov/ps/dapers/teleworkpolicy.pdf>

The Office of Personnel Services recognizes that telecommuting/teleworking is not appropriate for all employees. No employee is entitled to, or guaranteed the opportunity to, telecommute/telework. Offering the opportunity to work at home is an individual agency's option. As agencies develop agency-specific policies, they may want to address how their telecommuting/teleworking policy will work during normal operational levels and during specific COOP events such as a Pandemic Influenza outbreak in order to ensure that the policy is flexible and comprehensive enough to address both situations.

Human Resource (HR) Policies

During a COOP event, only mission-essential employees will be expected to report to work. Non-mission essential employees will be instructed to stay at home until such time as their skills are needed. Immediately following a COOP event, non-essential employees may be relieved of duty temporarily, may be reassigned duties or may be assigned to an alternate work site. Non-mission essential employees who are instructed to remain at home during the initial days of a COOP event will remain in pay status. Each individual agency will determine how long these employees will remain in pay status.

Existing State of Kansas policies have been reviewed and the following information is provided so that each agency has a baseline to include in the development of agency-specific COOP plans.

I. Leave Usage

Employees are able to use a variety of forms of paid leave in order to cover their absences during a COOP event. The type of leave available varies depending on the type and duration of the event. Agency appointing authorities have the ability to designate Administrative Leave pursuant to K.A.R. 1-2-74 (<http://da.ks.gov/ps/documents/regs/art-2.htm#1-2-74>) for any duration of time if they determine granting such paid leave is in the best interest of the State. Agencies should include guidelines for the types of events that administrative leave will cover as well as the general guidelines with respect to the duration of such leave in their agency-specific COOP plans.

Other forms of paid and unpaid leave available to eligible State employees are as follows:

1-9-4 Vacation Leave (<http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-4>)

1-9-5 Sick Leave (<http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-5>)

1-9-6 Leave without Pay (<http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-6>)

1-9-7c Military Leave (<http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-7c>)

– Each employee in a regular position who is a member of the State of Kansas National Guard shall be granted military leave with pay for the duration of any official call to state emergency duty.

1-9-24 Disaster Service Volunteer Leave

(<http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-24>)

– Used for employees who are called by the American Red Cross and the employee is certified to serve in the relief efforts.

Inclement Weather Leave

<http://www.da.ks.gov/ps/documents/updatedinclementweather.pdf>

COOP emergencies declared due to a public health threat may enable the employee to be covered by the provisions of the Family Medical Leave Act (FMLA). OPS Bulletin No. 09-03 provides State agencies guidelines on the provisions of the FMLA as it applies to State of Kansas Employees. This Bulletin can be viewed at the following link and a copy is labeled as Attachment D and is included at the back of this document:

<http://da.ks.gov/ps/documents/bulletins/0903.htm>

The State of Kansas also offers a shared leave program pursuant to K.A.R. 1-9-23 to provide donated leave to eligible employees who have exhausted all sick and vacation leave due to illnesses determined to be serious or life threatening. The Shared Leave program is administered by OPS.

Eligible employees who have worked continuously for the State of Kansas for at least six months and who have exhausted all paid leave may apply for Shared Leave for an employee's own qualified health condition, or for a family member's qualified health condition. An employee receiving workers compensation for the same injury/illness is not eligible for shared leave.

II. Leave Cancellation

In the event of a declared emergency or COOP event, each agency has the authority to cancel planned vacations and may also require employees to work on or through holidays if they are needed at the work site.

III. Hours of Work and Flexible Work Schedules

Agency appointing authorities may require each employee to work those hours that are necessary for the efficient conduct of the business of the state pursuant to K.A.R. 1-9-1. This also includes the ability for the designation of shifts and flexible work schedules within the standard forty-hour work week. Agencies should include guidelines in their agency-specific COOP plans for types of work schedules that exist or may be put into place in the event of a COOP emergency.

IV. Public Health Emergency Policies

In the event of a COOP emergency related to a Pandemic or other public health emergency, it may become necessary to require employees to receive medical assessments and to make other policy changes in order to deal with this specific COOP event. The Governor, based on recommendations of the Secretary of the Kansas Department of Health and Environment, will have the authority to declare a health or medical emergency for a portion or all of the State of Kansas. This

declaration may be in force for up to 15 calendar days and may be extended by the Kansas Legislature.

The declaration may involve establishing criteria to screen employees at State agencies and/or State operated facilities for symptoms of a contagious outbreak along with a directive for State agencies to reduce their operations to mission essential functions. Employees who are determined to have symptoms of a contagious nature shall not be allowed into a State office or facility. The head of the State agency shall develop and implement standards to transition back to normal operations after the declaration is terminated or expires.

It is also recommended that if a mission-essential employee reports to work, but does not pass the medical assessment, the employee would be sent home and put on paid administrative leave. If the mission-essential employee calls in sick, then he or she would remain in pay status utilizing available sick leave or administrative leave. The employees' agency will determine how long to keep employees in pay status.

Current regulations allow agency appointing authorities the ability to require an employee to use paid leave when they have reason to believe the employee cannot perform their duties because of illness or disability pursuant to K.A.R. 1-9-5(f). An appointing authority may request a written release by a licensed health care or mental health care professional ultimately responsible for the patients' health care before the employee is allowed to return to work.

The State of Kansas may also suspend travel during a pandemic event. Travel restrictions will be communicated to State employees as part of the declaration from the Governor and via other forms of communication discussed in this document.

IV. Infection Control

Certain COOP emergencies such as a pandemic will require agencies to have mechanisms in place to help mitigate the risk of their employees' exposure to the disease. Employee risk will vary depending on whether or not their jobs require them to come in close proximity to people infected with the pandemic influenza virus or if the employee has repeated contact with known sources of a pandemic influenza virus. The Occupational Safety & Health Administration (OSHA) of the U.S. Department of Labor has developed a document titled: Guidance on Preparing Workplaces for an Influenza Pandemic. The document can be found at the following link:

www.osha.gov/Publications/influenza_pandemic.html

Each agency should conduct a risk assessment of its employees to determine their risk level based on the type of work they perform. Agencies should ensure

that infection control measures are in place to limit the exposure of the pandemic influenza to its employees in high-risk occupations. OSHA has defined the following four risk categories to use in this assessment.

- Very high exposure risk occupations are those with high potential exposure to high concentrations of known or suspected sources of pandemic influenza during specific medical or laboratory procedures.
- High exposure risk occupations are those with high potential for exposure to known or suspected sources of pandemic influenza virus.
- Medium exposure risk occupations include jobs that require frequent, close contact (within 6 feet) exposures to known or suspected sources of pandemic influenza virus such as coworkers, the general public, outpatients, school children or other such individuals or groups.
- Lower exposure risk (caution) occupations are those that do not require contact with people known to be infected with the pandemic virus, nor frequent close contact (within 6 feet) with the public. Even at lower risk levels, however, employers should be cautious and develop preparedness plans to minimize employee infections.

Employers of critical infrastructure and key resource employees (such as law enforcement, emergency response, or public utility employees) may consider upgrading protective measures for these employees beyond what would be suggested by their exposure risk due to the necessity of such services for the functioning of society as well as the potential difficulties in replacing them during a pandemic (for example, due to extensive training or licensing requirements).

Protective Equipment:

It is the responsibility of each agency to provide personal protective equipment for its mission essential employees to perform their work assignments. Agencies should work with the Department of Administration, Office of Procurement and Contracts to ensure that they are procuring personal protective equipment at the best price.

Standards for personal protective equipment will be determined by the Kansas Department of Health and Environment, the CDC or local health organizations. Agencies should purchase hand sanitizer and other protective equipment in advance of the actual declaration of an emergency to ensure there will be a sufficient supply for mission-essential employees should the actual need arise.

Controlled Access to Buildings:

In the event that the Governor has declared an emergency and/or a COOP event has occurred it may become necessary to restrict and control access to State owned buildings to a single point of entry. In building(s) of the Capitol Complex where a COOP event or emergency has been declared by the Governor, Capitol

Police will change the secured access on employee key cards to a single point of entry into the building(s). In all other buildings, local authorities determine the most appropriate method(s) of controlling access.

VI. Health Insurance

Health insurance will not be affected if employees are in pay status. Agencies should attempt to keep employees in pay status as long as it is fiscally reasonable for their agency. Each agency will determine how long to keep their employees in pay status.

In addition, employees will continue to be provided health insurance for a period of 12 weeks if they are covered under the FMLA.

The State will incorporate standardized language into procurement documentation that advises vendors doing business with the State of Kansas that they are expected to be prepared in the event of a Public Health Emergency.

VII. Employee Assistance Program

The State of Kansas Employee Assistance Program (EAP) is an additional resource to assist eligible employees who may be experiencing a personal crisis due to the impacts of COOP related emergencies and may need access to mental health and social services.

The EAP is a special service provided for State of Kansas benefits eligible employees and their dependents at no charge. The EAP provides information, short-term counseling, advice, and referrals from licensed professionals. Eligible employees may access the program by dialing 1-888-275-1205 (option 7) that is available 24 hours a day, seven days a week.

EAP counselors are available to provide short-term counseling (up to four sessions per issue) and/or referral for the concerns that affect most employees. A few of the most common examples include the following:

- Marriage & relationship concerns
- Family & parenting questions
- Domestic violence
- Emotional & stress related issues
- Alcohol & drug problems
- Grief & loss
- Work related concerns
- Childcare Information & Referral
- Eldercare Information &Referral
- Financial Counseling

VIII. Summary of Benefits for Unemployed Workers

Certain COOP emergencies could result in the loss of State jobs, depending on the duration of the event. Pursuant to K.A.R. 1-14-11 and K.A.R. 1-14-7 respectively, agencies may have to consider either a furlough or layoff as a result of a COOP event.

The following summary of benefits may be provided to employees so that they are aware what benefits are available upon a loss of employment.

Unemployment Benefits

Following a one-week waiting period and if able and available to work, former employees may be eligible for unemployment benefits. To avoid any delay of benefit payments, it is extremely important that claims for unemployment benefits are filed as soon as possible following an employee's last day at work. For additional information concerning unemployment benefits, employees should call their local Job Service Center.

Accumulated Leave

Employees separating from State service will be paid for the maximum allowed accumulated vacation leave and compensatory time credit in addition to their earned biweekly or hourly pay on their last paychecks. Employees will not be paid for any accumulated sick leave or for any holidays occurring after the effective date of your layoff. Employees should contact their HR office as soon as possible if they wish to change their exemptions or withholding for income tax purposes on their final paycheck.

Employee Assistance Program (EAP)

A counselor is available 24-hours a day for help in dealing with personal or family problems related to the loss of employment. This service will be available to employees and their immediate family through the last day of the month in which they work. The toll-free number for the EAP is 1-888-275-1205 (option 7).

Health Plan

If an employee is enrolled in the State's health plan when he or she separates from State service, their coverage will end on the last day of the month in which they were in pay status. Employees will be sent a letter to their home addresses after their last day of work that offers up to 18 months of health insurance coverage under COBRA. Employees will be responsible for paying the full cost of the coverage, which will include both the share they paid as an active state

employee, and the share the State of Kansas paid as the employer. Employees should contact their HR office if they have questions regarding health coverage.

KPERS – Retirement

If an employee is contributing to KPERS through payroll deduction, their final deduction will be made from their last paycheck.

If they are vested in KPERS (5 years or more of credited service), they will have the option of leaving their contributions with KPERS where they will continue to accrue interest and the former employee will be eligible for retirement benefits upon reaching retirement age. They may also choose to make application for withdrawal of accumulated contributions. This takes approximately six weeks from the time all documentation is received by KPERS to process the withdrawal. Amounts withdrawn may be subject to federal income taxes.

If an employee is not vested in KPERS (less than 5 years of credited service), they may choose to make application for withdrawal of accumulated contributions (see above). If the contributions are not withdrawn, the former employee's KPERS membership will be protected for 5 years. Interest will continue to be credited and should the former employee become employed in a KPERS-covered position within that 5-year period, their participation in KPERS would be immediate. If the former employee does not return to covered employment and does not withdraw their contributions, the contributions will revert to the employer's reserve at the end of the 5-year protection of membership. A special application can be made to the board of trustees to withdraw contributions that revert to the employer's reserve. Employees should contact their HR office for details regarding retirement.

Group Life Insurance

If an employee is in a benefits eligible position, they are covered by group term life insurance through KPERS through the last day of the month in which they are in pay status. Coverage equals 150% of their annual rate of compensation.

Employees do have the option of converting the group life insurance into an individual policy at their cost. A completed conversion form must be submitted as soon as possible after their last day at work as the first month's premium payment, along with an application, must be received within 31 days of their last day in pay status. Rates will be at a higher rate, but they will not be required to show proof of good health. Their HR office will have the required forms.

Optional Group Life Insurance

If employees are enrolled in optional group life insurance, their coverage will end the last day of the month in which they are in pay status. They may convert to an individual term life insurance policy, at their cost, and they will need to complete

a conversion information form and send it to KPERS in order to do so. An application and the first month's premium must be received within 31 days from their last day in pay status. Their HR office will have the required forms.

Deferred Compensation

If an employee is participating in deferred compensation, their final deduction will be made from their last paycheck or they may choose to end their participation prior to their final paycheck. Employees will need to contact their ING Financial Advisor representative to make this change. The telephone number for ING Financial Advisors is 1-800-232-0024 outside of Topeka or (785) 296-7095 in Topeka.

Following their last day at work, they will be eligible to withdraw funds contributed to deferred compensation. Distribution will be taxable (20% federal; 5% State of Kansas) as ordinary income. Employees will need to contact their ING Financial Advisors representative to obtain the needed forms to withdraw their contributions.

Employees also have the option of leaving their contributions in their deferred compensation account. They will not be able to make any additional contributions to the account, but the account will continue to accumulate interest on a tax-deferred basis until retirement. In addition to accruing interest, former employees will have the opportunity to transfer their contributions over to a new employer on a tax-deferred basis, if their new employer qualifies to sponsor deferred compensation plans.

All participating employees are strongly encouraged to contact their ING Financial Advisors representative upon learning of an impending loss of employment.

KanElect Flexible Spending Accounts

If employees are enrolled in either of the two flexible spending accounts (FSA), their participation will end effective the end of the month in which they were last in pay status.

For Health Care FSA, they will have until March 31st following the end of the plan year to file claims which were incurred up to the end of the month in which they lost employment. Coverage may be extended on an after-tax basis if they elect continuation of health care coverage under COBRA.

For Dependent Care, they will have until March 31st following the end of the plan year to file claims which were incurred up to the end of the plan year as long as IRS guidelines are met.

United Way

If employees have payroll deductions for United Way, the final deductions will be made from their last paycheck. They will need to contact their HR office if they choose to end participation prior to their final paycheck.

Learning Quest

If employees have payroll deductions for Learning Quest and have met the required \$500 minimum contribution amount, then contributions will stop automatically after their final paycheck. If they have not reached the required minimum contribution amount of \$500, or if they wish to continue contributing to their Learning Quest account, they will need to convert the account to an automatic monthly investment of \$25 or more, which will be deducted from their personal savings or checking account. For required paperwork or additional information, contact Learning Quest at 1-800-579-2203.

This notification is intended to comply with federal and state laws and regulations concerning benefits. Items explained herein are subject to change and shall be interpreted in accordance with controlling laws.

Communication

The State of Kansas Employee Self-Service portal located at www.kansas.gov/employee will be used as the official mechanism to keep employees informed during designated COOP events.

In the event of inclement weather, this web site is a resource for employees to learn if and when they need to report to work. It will also be used to communicate critical health and employment information in the event of a designated COOP event. A category titled 'Emergency Preparedness & Safety' is located on this web site and will be used for the purpose of posting this information.

In addition to the Employee Self-Service portal, an HR and management e-mail list can be used to quickly get important information to both management and HR specialists who can then distribute the information to employees.

Employee work site telephone numbers can be found at the following link: www.da.ks.gov/phonebook. Information accessible through this link is updated every two weeks from information updated by State agencies and contained in the State's HR and payroll system.

Agencies should ensure that employees are educated about these web sites so that they will know where to look for this important information in the event of a COOP event. Another way that agencies can help to ensure employees understand that they may play a different role during a COOP event is to replace the existing 'Other Duties as Assigned' statement found on the majority of position descriptions with the following language.

Completes special projects and performs other duties as assigned including but not limited to ensuring the agency is adequately staffed during and immediately following natural and/or manmade disasters, infectious disease outbreaks, and/or acts of terrorism. Assists other employees in the work unit in accomplishing assignments as necessary.

Agencies may also wish to consider adding COOP or Emergency Preparedness information in their new employee orientation training and should ensure that managers/supervisors are educated on existing leave policies and benefits that are available to employees in the event of a COOP emergency.

ATTACHMENTS

Attachment A

Bulletin No. 08-04

1.0 **SUBJECT:** State Telecommuting Policy

2.0 **EFFECTIVE DATE:** August 25, 2008

3.0 **DISTRIBUTION:** State HR Directors

4.0 **FROM:** George Vega, Director **DATE:** August 25, 2008

5.0 **PURPOSE:** This Bulletin is being issued in order to clarify that State agencies in the Executive Branch have the flexibility under existing policies and regulations to provide for telecommuting (also known as Telework) opportunities for employees in their agencies. This Bulletin establishes the general framework for any such policies but it does not attempt to address the unique needs of all individual agencies.

6.0 **BACKGROUND:**

There are no regulations or statutes that specifically address the subject of telecommuting nor are there current statewide policies providing guidance on the establishment of such policies. Telecommuting can be an effective tool for agencies to attract and retain a diverse and talented work force. There are many advantages to telecommuting, including reduced transportation costs, improved productivity among employees, and providing agencies with the ability to quickly implement social distancing of employees in the case of a COOP (Continuity of Operations) event such as a Pandemic Influenza outbreak.

7.0 **PROCEDURES:**

7.1 For the purposes of this Bulletin:

a) "Telecommuting" means working one or more days each work week from a location other than the employee's regular worksite; and

b) an employee's "regular worksite" means the State agency worksite where the employee would be required to work if he or she did not telecommute.

7.2 Within the limitations established by K.A.R. 1-9-1, Executive Branch agencies in the State of Kansas may develop and implement telecommuting policies and provide the option to telecommute to employees, when the agency determines such an arrangement to be appropriate and in the best interests of the State of Kansas. Telecommuting may be part of an employee's regular schedule or done on a short-term basis.

7.3 Telecommuting is not appropriate for all employees or positions and the decision of whether to develop and/or implement a telecommuting policy is a management decision that may be made at the discretion of the appointing authority. No employee is entitled to, or guaranteed the opportunity to, telecommute. Factors that may influence the consideration of telecommuting include: the nature of a job and the suitability of performing required tasks away from the “regular worksite”, the personal characteristics and work habits of an employee and the management style of the supervisor.

7.4 In situations where telecommuting has been deemed to be appropriate and an agency has developed and instituted a policy, such policies must clearly delineate the parameters of the options with respect to telecommuting. These include, but are not limited to: security of privileged information, safety, work environment, availability for contact, property provided by the employer and that which is the responsibility of the employee, any costs attributed to the employer as well as to the employee and access to the telecommute worksite by the agency.

7.5 When the opportunity for telecommuting is offered, such an option shall not negatively affect the customer service provided to the citizens of the State of Kansas or other customers of the agency. The business needs of the agency, the public and the State of Kansas as a whole shall be considered paramount in the decisions of whether to offer such an option to employees.

7.6 Any policy or procedure with respect to telecommuting developed pursuant to this Bulletin shall comply with all applicable Federal and State rules, regulations and statutes.

8.0 **REFERENCES:** K.A.R. 1-9-1, <http://da.ks.gov/ps/documents/regs/art-9.htm#1-9-1>

9.0 **CONTACT PERSONS:** Jan Cavalieri at jan.cavalieri@da.ks.gov or at (785) 296-4743.

Attachment B

Department of Administration Telework Policy

Purpose and Overview

The purpose of telecommuting is to promote telework as a means of achieving administrative efficiencies, reducing transportation costs, supporting continuity of operations plans and sustaining the hiring and retention of a highly qualified workforce by enhancing work/life balance. Time spent in telework is meant to be free from distractions and is for the purpose of completing assigned work as would be expected in a regular work site.

Telework may be a permanent, lasting arrangement or a temporary situation to accommodate an injury, illness, pregnancy, natural disaster, pandemic or planned events such as moving the office or a special project. Telework is not intended to be used in place of sick leave, Family and Medical Leave, Workers' compensation leave or other types of leave programs. Agency management may determine whether it is appropriate to offer telework as an opportunity for partial or full return-to-work following illness or injury.

Telework is not an employee right or benefit but a discretionary management tool. The agency may terminate the telework agreement at its discretion and advance notice is not required. Termination of a teleworking arrangement by management is not grievable.

Assessment and Planning

Telework is not appropriate for every job, employee, supervisor or situation. Rules, regulations and policies such as Workers Compensation, FLSA, FMLA, and other laws apply when working at an alternative office location. For these reasons, it is critical that agencies carefully assess when and how they may utilize telework in meeting their business needs.

A position may be suitable for telework if any of the following examples apply:

- Work activities are portable, can be performed effectively outside of the official work site and are conducive to supervisory oversight at the telework site.
- Job tasks are easily quantifiable or primarily project oriented.
- An employee's participation in the telework program will not adversely affect the workload or performance of other employees.
- Technology, information and equipment needed to perform the job offsite are available.
- Security of information and equipment can be provided for efficiently at the telework site.

- Office coverage, access to the customer, team involvement and access to the manager are unaffected by the employee's location.
- The work of the employee is such that he/she can work and resolve routine problems independently.

In addition to determining whether a position is suitable for telework, it is also important to consider the employee who is being considered as a potential teleworker as well. In order to be considered as a potential teleworker, an employee must have:

- Been an employee of the agency for at least twelve (12) consecutive months;
- A current performance evaluation of at least meets expectations; and
- Not received any reprimands or disciplinary actions in the previous twelve (12) months.

Once a determination is made that both the position and the employee occupying the position are suitable for telework, it is necessary to determine whether the employee can provide for an adequate offsite work area. While most employees can take a laptop home and claim that they can effectively do work from their home, for telecommuting to truly be effective, there is a need to provide for a dedicated "office" space with control over noise, interruptions, work equipment, and materials.

In considering whether an offsite work area is conducive to effective telework, the agency should consider the following basic standards:

- The environment must be free of safety and fire hazards.
- The location must have adequate work space with access to telephone and electrical outlets, as well as an internet connection.
- The work area must be separate from on-going domestic activities, and provide for the security and safety of work materials

If approved, the supervisor or other designated agency staff are encouraged to visit the teleworker's offsite work area during scheduled telework hours in order to verify that the employee is teleworking as scheduled, confirm that the site remains safe and free from hazards and to maintain, repair, inspect or retrieve agency-owned equipment, software, data or supplies.

Equipment and Materials

Agencies are not obligated to assume responsibility for operating cost, home maintenance, or other costs incurred by employees in the use of their homes or other alternate work locations for telework. Where appropriate, an agency may provide equipment and materials needed by employees to effectively perform their duties but where agreements specify, employees may be authorized to use their own equipment.

Where State-owned or issued equipment and/or materials are deemed appropriate, they may be used only for authorized agency purposes by authorized employees. Employees are responsible for protecting state-owned or issued equipment from theft, damage and unauthorized use. State-owned or issued equipment used in the normal course of employment will be maintained, serviced and repaired by the state.

When employees are authorized to use their own equipment, agencies will not assume responsibility for the cost of equipment, repair, or service.

Regardless of the equipment used, employees must safeguard agency information used or accessed while teleworking.

Responsibilities in Telework

The responsibilities of the telework employee are as follows:

- Abide by all work-related policies and regulations, work behavior and expectations as required of employees in non-alternative work sites.
- Spend agreed-upon time at the agreed-upon alternative work site and attend meetings as required.
- Inform management when unable to work and accurately report time and attendance in accordance with existing policy.
- Regularly contact the official work site to retrieve messages and remain in contact with their supervisor.
- Protect all state equipment and information while it is at the alternative work site or while in travel status.
- Report all information technology (IT) security incidents and any work-related accidents.
- Maintain safe conditions in the work area and if working at home, maintain adequate homeowners, renters, or commercial general liability insurance.

The responsibilities of supervisors and/or managers of telework employees are as follows:

- Evaluate and monitor cost/benefit effectiveness of the telework arrangement
- Meet with teleworking employees a minimum of each quarter for the purpose of discussing, reviewing and updating the telework agreement.
- Meet with employees to give assignments and review work as necessary.
- Develop and discuss performance plans and goals with employees prior to beginning the telework assignment.
- Clearly establish when teleworkers are expected to report to the official work site for events requiring their presence.

Telework Agreement

No employee may begin telework until he or she and his or her supervisor have completed and signed the State of Kansas Telework Agreement.

Provisional Period:

- At the beginning of the Telework arrangement, there is a 90-day provisional period.
- During or immediately after the provisional period, the supervisor or manager will conduct a review to determine if the Telework arrangement is the best work arrangement for the agency, board or commission.
- After the initial review, the State of Kansas Telework Agreement is to be reviewed at least annually, or when there is a major job change (e.g., promotion), the Telework employee or manager or supervisor change positions, or any portion of the arrangement covered by the agreement changes.

Questions

For questions regarding telework arrangements, please contact Ken Otte at Ken.Otte@da.ks.gov or by phone at (785) 296-4383.

Attachment C

Bulletin No. 09-03

1.0 SUBJECT: FMLA Guidelines for the State of Kansas

2.0 EFFECTIVE DATE: April 5, 2009

3.0 DISTRIBUTION: State HR Directors

4.0 FROM: George Vega, Director **DATE:** March 25, 2009

5.0 PURPOSE: This Bulletin is being issued to update and replace Bulletin 05-06 due to changes and clarifications in the Amended Family Medical Leave Act, effective January 16, 2009. Bulletin 05-06 is hereby revoked.

6.0 BACKGROUND:

Bulletin 09-03 sets out the statewide policy with respect to the FMLA. That policy had formerly been set out in regulation but at the suggestion of a team of state human resource personnel, the FMLA policy had been transferred to a Bulletin since the basic protections and rights afforded by the FMLA are set out in federal law.

The FMLA specifies: "a State is a single employer". With that in mind it is the official position of the State of Kansas that all state agencies will administer the FMLA in a uniform and consistent manner in compliance with the federal law as outlined below.

7.0 PROCEDURES:

7.1 Pursuant to 29 U.S.C. 2601 et seq., each eligible employee is entitled to 12 workweeks of paid or unpaid leave during any 12-month period, beginning the first day leave is taken.

7.2 In order to be eligible for leave under the FMLA, an employee must have:

a) been employed by the State of Kansas for at least 12 months; and

1) the 12 months an employee must have been employed by the state of Kansas need not be consecutive months.

b) worked for the State of Kansas for at least 1,250 hours during the 12-month period immediately preceding the beginning of the leave designated as FMLA leave.

1) for the purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months", the employee must have been in pay status for any part of a week for at least 52 weeks, including any period of paid or unpaid leave during which

other benefits or compensation were provided to the employee.

7.3 Circumstances for which an employee would be eligible for FMLA leave include the following:

a) the birth of the employee's child and the care of the child within the 12 months immediately following birth;

b) the placement of a child with the employee for adoption or foster care within the 12 months immediately following placement;

c) physical or psychological care due to a serious health condition of any of the following individuals:

1) the employee's spouse;

2) a child of the employee who meets one of the following criteria:

A) the child is under age 18; or

B) the child is 18 or older and incapable of daily self-care because of a mental or physical disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.;

3) the employee's parent;

4) the employee's own serious health condition that prohibits the employee from performing all or part of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act, or

5) Qualifying Exigency Military Leave

A) For employees whose spouse, child, or parent is on active duty or call to active duty (members of regular armed services are not included);

B) Short term deployment issues, can be used for a period of 7 calendar days beginning on the date of notification;

C) Military event and related activities;

D) Counseling;

E) Financial and legal arrangement;

F) Rest and recuperation;

G) Post-deployment activities

6) Leave to care for a covered service member with a serious injury or illness

A) Injury or illness is incurred in the line of duty on active duty

B) Employee must be a spouse, child, parent, or next of kin of the covered service member.

7.4 For purposes of the FMLA, “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

a) inpatient care; or

b) continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care professional shall involve at least one of the following:

1) a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, if it involves either of the following:

A) treatment two or more times by a health care provider or a provider of health care services under orders of the health care provider; or

B) at least one treatment by a health care provider that results in a regimen of continuing treatment under the health care provider's supervision;

2) any period of incapacity due to pregnancy or for prenatal care;

3) any period of incapacity or treatment for incapacity due to one of the following chronic serious health conditions:

A) a condition that requires periodic treatment by a health care provider;

B) a condition that continues over an extended period of time; or

C) a condition that causes episodic incapacity rather than a continuing period of incapacity;

4) a period of incapacity that is permanent or long-term and is due to a condition for which treatment may not be effective; or

5) any absence to receive multiple treatments by a health care provider for one of the following:

A) restorative surgery after an accident or other injury; or

B) a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment.

7.5 As the US Department of Labor views the State of Kansas as one employer, the state's official position is that the administration of the FMLA will be uniform and consistent for all state agencies.

a) The agency should begin the FMLA notification within five days after a request for leave is submitted by the employee, or of the date the employer becomes aware of a potential FMLA event, regardless of whether the employee does or does not have paid leave time available. The agency must provide the employee with written notice detailing the specific expectations and obligations of the employee under the FMLA, a copy the appropriate federal Certification form and an explanation of any consequences of a failure to meet these obligations.

b) If the employee has paid leave time available, the FMLA will run concurrently. If the employee does not have paid leave to cover the FMLA absences, the FMLA leave will be leave without pay.

c) The federal FMLA forms should be used for all FMLA notifications. A list of these forms is as follows:

1) Notice of Eligibility and Rights and Responsibilities - WH-381

2) Certification of Health Care Provider for Family Member's Serious Health Condition – WH-380-F

3) Certification of Health Care Provider for Employee's Serious Health Condition – WH-380-E

4) Certification of Qualifying Exigency for Military Family Leave – WH-384

5) Certification for Serious Injury or Illness of Covered Service member for Military Family Leave – WH-385

6) Designation Notice – WH-382

7.6 Once an agency has determined that the employee is eligible for leave and the reported condition qualifies as a “serious condition” under the FMLA, the agency must notify the employee that the requested leave has been designated as FMLA leave.

a) The agency’s notice to the employee that the leave has been designated as FMLA leave may be orally or in writing.

b) If the notice is oral, it must be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday).

c) The written notice may be in any form.

Note – Examples of documents that can be used to satisfy the notice requirements set out in sections 7.5 and 7.6 can be found at the following link: <http://www.dol.gov/esa/whd/fmla/finalerule.htm>

7.7 All time away from work that is taken due to circumstances that qualify under subsection 7.4 must be approved by the agency and must count against the employee’s 12 workweek leave entitlement, beginning with the first day that the agency has knowledge of a possible situation that may qualify for FMLA leave.

a) Exempt employees are still required to use sick, shared and vacation leave, as well as any holiday compensatory time, in half or full day increments and leave without pay in full day increments.

b) In accordance with recommendations of US DOL, exempt employees using leave without pay for FMLA purposes are to use leave without pay only in full-day increments.

c) Only the actual time spent away from work may be counted against an employee’s 12 workweek leave entitlement.

d) If an employee is on unpaid FMLA leave for greater than 30 days, their length of service will not be negatively affected by such absence. Unpaid FLMA leave will continue to count toward the employee’s length of service.

7.8 An employee must receive intermittent leave or a reduced work schedule when medically necessary for the employee’s serious health condition or to care for a family member with a serious health condition.

An employee may receive intermittent leave or a reduced work schedule for the birth of the employee's child or for the placement of a child with the employee for adoption or foster care.

a) The exempt status of an exempt employee shall not be affected if deductions are made from the employee's salary for any hours taken as intermittent leave or a reduced work schedule within a work week.

b) The appointing authority may transfer any employee to an available position with equivalent pay and benefits during a period of intermittent leave or a reduced work schedule.

c) Any employee returning from intermittent leave or a reduced work schedule must be returned to the same or equivalent position with equivalent pay, benefits, and terms and conditions of employment, in accordance with K.A.R. 1-9-6.

7.9 The appointing authority shall require an employee to provide a certification containing evidence necessary to establish that the employee is entitled to leave under the FMLA. The employee must be given a written notice of the requirement. The first certification shall be at employee expense. The appointing authority may require a second certification at agency expense when the validity of the first certification is in doubt. A third certification may be required at agency expense when the first and second certifications differ, and the third certification shall be final and binding. Employees must be allowed at least 15 calendar days to provide the requested certification.

7.10 The agency may require the employee to provide no more than one recertification opinion for each qualifying condition every 30 days in conjunction with an absence, at employee expense, for long-term conditions under continuing supervision of a health care provider except that a recertification opinion may be required before the end of 30 days if circumstances described by the previous medical certification have changed significantly or the agency receives information that casts doubt upon the employee's reason for the absence.

7.11 Each agency shall maintain the employee's group health insurance coverage during an employee's 12 workweek FMLA leave entitlement under the same conditions and with the same agency contributions as provided when no leave is taken.

7.12 Each agency must post a notice that provides information regarding the FMLA in a conspicuous place accessible to employees and applicants.

7.13 The agency's obligations under the FMLA shall cease when the employee gives notice of the employee's intent not to return to work.

8.0 REFERENCES:

29 U.S.C 2601 et seq. The FMLA may be viewed in its entirety, at the following website. <http://www.dol.gov/esa/whd/fmla/finalrule.htm>

9.0 CONTACT PERSONS:

Pat Writt at pat.writt@da.ks.gov or by telephone at (785) 296-4352.